IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 29.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.381 of 1995

1. Rajamudaliar
2. Kailasa Mudaliar
3. Santha
4. Suguna
5. Arivazhagan
6. Amudha
7. Annadurai
8. Kavitha

(Appellants 3 to 8 brought on record as LRs of the deceased 1st appellant as per order of court vide CMP No.1755 of 1999)

... Appellants/Defendants.

Vs.

Arulmigu Kamatchiamman Koil,
Tiruvannamalai,
Rep.by its Executive Officer.

... Respondent/Plaintiff.

PRAYER: Second Appeal against the Judgment and decree in A.S.No.70 of 1994 on the file of Sub-ordinate Judge, Tiruvanamalai dated 27.01.1995 confirming the judgement and decree of the learned District Munsif in O.S.No.169 of 1981 dated 20.06.1994.

For Petitioners : Mr.K.Veeraraghavan
For Respondent : No Appearance

J U D G M E N T

The unsuccessful defendants in both the Courts below are the appellants out of whom the first appellant died.

2. The plaintiff which is the temple governed by the Hindu Religious and Charitable Endowment Act, has leased out the suit property along with the building for three years from 01.02.1978 on a monthly rent of Rs.267/- to the defendants and on 02.05.1978 the plaintiff and defendants have entered into a registered rental agreement marked as Ex.A.1 based on which after three years, namely, on 31.01.1981 the defendants are bound to

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deliver vacant possession. Even though no termination notice is required, the plaintiff has issued a notice on 26.12.1980 marked as Ex.A.2, which was received by the defendants on 27.12.1980 marked as Ex.A.3 and Ex.A.4, which is the postal acknowledgment for which in fact the reply was given on behalf of the defendants on 21.01.1981 under Ex.A.5. Since the Rent Control Act is not applicable, the plaintiff has filed the suit for possession. While the defendants have admitted the rental agreement till 31.01.1981, it is their case that they have paid the rent at the rate of Rs.275/- per month from 01.12.1981 to 31.01.1984 and therefore, it should be deemed to be a fresh tenancy.

3. In the additional written statement the second defendant has chosen to state that the superstructure does not belong to the plaintiff temple and therefore, they are entitled to the protection under the Tamil Nadu City Tenants Protection Act and therefore, according to the second defendant the suit was not maintainable.

4. On appreciation of the facts and evidence and finding that the defendants have admitted that the suit property belongs to the plaintiff temple and even though it is stated by the defendants that the superstructure was put up by the defendants, that the second defendant has been paying property tax as far as the superstructure is concerned, the trial Court found that the defendants have not proved that they have constructed the superstructure, by producing the plan from the Corporation, etc. It was also specifically found that Exs.B.1 and B.2 receipt issued by the Municipality are not relating to the suit property. The Trial Court has also found that the defendants have specifically admitted that they have paid the rent to the plaintiff as per the admitted rental agreement, Ex.A.1 and the said Ex.A.1 rental agreement specifically contains the facts that what was leased out, was not only the site, but also the building and in that view of the matter, the plaintiff is the owner of both the site and the superstructure and therefore, as per the said Ex.A.1, lease deed, the defendants are bound to vacate and ordered the defendants to vacate from the suit property. It was as against the said judgement the defendants have filed the first appeal and the First Appellate Court has also confirmed the judgement and decree of the Trial Court on the basis of Ex.A.1 document further finding that the notice under Section 106 of the Transfer of Property Act was given, against which the Second Appeal is filed.

5. While admitting the second appeal, the following substantial questions of law were framed:

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"1. Whether the categorical statement made in evidence by P.W.1 in corroboration of Ex.B.1 dated 02.05.1978 is not sufficient to dismiss the suit?
2. Whether after the expiry of lease of 3 years under Ex.B.1, the continuous receipt of the enhanced rent received by the respondent is not amounting to the creating of new tenancy as held in 1975 T.N.L.J. Page 464?
3. Whether the non appreciation of lower Court of the evidence adduced before them is justifiable?
4. Whether the finding of the lower court on issue framed by them is sustainable in view of the documents filed before the Court below?"

6. It is relevant to point out that Ex.B.1 which is relied upon by the second defendant stating that the second defendant has paid the property tax in the year 1992 - 1993 in respect of Door No.110 C is not only after the suit was filed and just before the judgement given by the Trial Court, but as correctly found by the Trial Court, it does not relate to the suit property, which is stated to be Door No.110 A in Ex.A.1 lease deed; whereas Exs.B.1 and B.2 relied upon by the second defendant relate to Door No.110-C. In view of the above said factual position, there is no substantial question of law involved in this case.

7. The Second Appeal fails and the same is dismissed without costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nbj

To
1. The Subordinate Judge, Tiruvannamalai.
2. The District Munsif, Tiruvannamalai.
+ 1 CC To Mr.V.Chandrakanthan, Advocate SR NO.20282

S.A.No.381 of 1995

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